



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/170939

PRELIMINARY RECITALS

Pursuant to a petition filed December 22, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care in regard to Medical Assistance, a telephone hearing was held on January 26, 2016.

The issue for determination is whether the respondent correctly terminated petitioner's oral nutrition service.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
MY Choice Family Care
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner testified that he has suffered five strokes and two brain aneurisms; respondent concurred that petitioner has a history of cerebral infarction with monoplegia of left upper limb. Petitioner has utilized a cane for 15 years.

3. Petitioner was previously enrolled in the IRIS program, and reportedly received Supportive Home Care and Personal Care 54.6 hours per week, and Ensure Plus oral nutritional supplement. In order to provide proper continuation of care, petitioner's care hours and nutritional supplement were continued when he transitioned from IRIS to FCP.
4. Following its assessment pertaining to petitioner's Ensure oral nutritional supplement, the respondent determined that it was no longer necessary and terminated that service.
5. The respondent sent petitioner a Notice of Action dated November 18, 2016, notifying him that it was terminating his Ensure oral nutritional support service.
6. Petitioner appealed the termination of the Ensure service, as well as a modification of his SHC hours, via the FCP grievance process. The MCO Grievance and Appeal Committee upheld both the termination of the oral supplement and the reduction in SHC services.
7. Petitioner filed an appeal with the Division of Hearings and Appeals on December 22, 2015.
8. On January 19, 2016, the respondent received notice that petitioner voluntarily disenrolled from FCP, and enrolled with IRIS.

DISCUSSION

The petitioner receives Family Care Medical Assistance benefits through My Choice Family Care. This health-service delivery system is authorized by a medical assistance waiver under 42 USC 1315 and is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. Family Care recipients are placed under the roof of a single private provider, called a care maintenance organization (CMO), that receives a uniform fee, called a capitation rate, for each person it serves. The CMO is responsible for ensuring that the person receives all the Medicaid and Medicare services available to him. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap.

Once a person is found eligible for the Family Care Program, Wisconsin law requires the CMO to assess his needs and create an individual service plan that meets those needs and values. This plan must provide services and support at least equal to those he would receive under the Wisconsin Medical Assistance Program and the various MA Waivers program. It can provide additional services that substitute for and augment these services if they are cost effective and meet his needs. Wis. Admin. Code, § DHS 10.41(2).

When determining whether medical assistance regulations requires the CMO to provide a specific service, the CMO must consider, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;

5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

In this case petitioner is eligible for FCP, is enrolled in a CMO, and is receiving FCP benefits. Petitioner appeals because he was previously authorized to receive Ensure oral nutritional supplement, in accordance with his physician's prescription. The provision of Ensure was terminated following petitioner's transition from IRIS to Family Care.

The respondent based its termination decision based upon its findings that petitioner's weight is not a present concern, as he presently presents with an overweight body mass index of 28.6kg/m2. The respondent further noted that petitioner is able to eat and drink natural foods of his choosing, and does not have any problems related to chewing or swallowing. The petitioner counters that he does, in fact, present as a choking hazard. I have reviewed the record, and I do not find any medical records which would corroborate this contention. Based upon the record before me, I conclude that the respondent's termination of petitioner's oral nutrition service was reasonable based upon its determination that the service is not medically necessary.

CONCLUSIONS OF LAW

The Ensure oral nutrition service requested by the petitioner is not medically necessary.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby **DISMISSED**.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of March, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 17, 2016.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability